

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LYNN T. PASLEY,

Plaintiff,

Case No. 1:07-cv-583

v

HON. JANET T. NEFF

UNKNOWN OLIVER,

Defendant.

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**ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant filed a motion for summary judgment on the ground that plaintiff failed to exhaust his available administrative remedies. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court deny defendant's motion. The Magistrate Judge determined that defendant was not entitled to summary judgment on his affirmative defense. The matter is presently before the Court on defendant's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections.

Defendant requests this Court reject the Magistrate Judge's recommendation and grant his motion for summary judgment based on plaintiff's failure to exhaust administrative remedies. To that end, defendant asserts that Exhibit M referenced in plaintiff's complaint is "non-existent" and points out that the date stamps on plaintiff's Exhibit E are blacked out and cannot be read.

Defendant's argument demonstrates no error in the Magistrate Judge's analysis.

The Magistrate Judge acknowledged the possibility that plaintiff may have technically failed to comply with requirements of the MDOC grievance policy. Report and Recommendation at 10. The Magistrate Judge nonetheless properly concluded that plaintiff's "averments and attachments are sufficient to raise a question of fact as to whether all steps of the process actually were 'available' to him within the meaning of 42 U.S.C. 1997e(a)." *Id.*

**THEREFORE, IT IS ORDERED** that the objections (Dkt 22) are DENIED and the Report and Recommendation (Dkt 21) is APPROVED and ADOPTED as the opinion of the Court.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment (Dkt 15) is DENIED.

Date: August 27, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge